



1 Plaintiff Fortinet, Inc. (“Fortinet”) hereby alleges for its Complaint against Defendants  
2 Sophos, Inc. (“Sophos”) and Michael Valentine (“Valentine”) on personal knowledge as to its own  
3 actions and on information and belief as to the actions of Sophos, Valentine, and third parties as  
4 follows:

5 **INTRODUCTION**

6 1. Fortinet brings this action against Sophos and Valentine to seek remedies for the  
7 repeated and ongoing violations—by Sophos and Valentine—of Fortinet’s legal rights. This  
8 includes Sophos’ infringement of United States Patent Nos. 7,698,744, 8,069,487, and 8,195,938  
9 (collectively, the “Asserted Patents”). This also includes the wrongful conduct of Sophos and  
10 Valentine with respect to Fortinet’s contractual and common-law entitlements.

11 **PARTIES**

12 2. Fortinet is a Delaware corporation with a principal place of business at 1090 Kifer  
13 Road, Sunnyvale, California 94086. Fortinet is a leading provider of network security appliances  
14 and services, and a market leader in unified threat management systems.

15 3. Defendant Sophos is a Massachusetts corporation having its principal place of  
16 business in the United States at 3 Van de Graaff Drive, Second Floor, Burlington, Massachusetts  
17 01803.

18 4. Defendant Valentine is an individual who was previously employed by Fortinet,  
19 and is now employed by Sophos as the “Senior Vice President, Worldwide Sales” of Sophos, as  
20 alleged in greater detail below. Valentine lives and works in this District. On information and  
21 belief, Valentine maintains his primary residence in Los Gatos, California.

22 **JURISDICTION AND VENUE**

23 5. This is an action for patent infringement arising in part under the patent laws of the  
24 United States, codified at 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction over  
25 this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

26 6. This Court has supplemental jurisdiction over Fortinet’s state law claims pursuant  
27 to 28 U.S.C. § 1337. The federal and state claims alleged herein are so related that they form part  
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1 of the same case or controversy. Judicial economy, convenience, and fairness to the parties will  
2 result if this Court asserts jurisdiction over the state claims.

3       7. This Court has personal jurisdiction over Sophos. On information and belief,  
4 Sophos has transacted business in this District, contracted to supply goods or services in this  
5 District directly or through its agents, has offered for sale, sold and/or advertised its products and  
6 services in the this District, and has otherwise purposely availed itself of the privileges and  
7 benefits of the laws of the State of California. In addition, this Court has jurisdiction over Sophos  
8 because Sophos has committed acts of patent infringement during the course of its business in this  
9 District. In addition, as alleged below, Sophos currently employees 1+ individuals in this District  
10 and is therefore physically present here, has poached 1+ individuals in this District from the  
11 employment of Fortinet, and has induced 1+ individuals in this District to breach contractual  
12 agreement(s) with Fortinet. Furthermore, Sophos maintains systematic, ongoing business  
13 operations inside this District, including a physical presence inside this District. By way of  
14 example, Sophos currently lists numerous job openings inside this District on its own web site,  
15 including an opening for a “Channel Manager – West Coast” with a “Location” defined as “Santa  
16 Clara, California.” Sophos is currently advertising a job opening for an “Enterprise Account  
17 Executive – Northern California” with a “Location” defined as “San Francisco, California.”  
18 Sophos is currently advertising a job opening for an “Office Administrator” with a “Location”  
19 defined as “Santa Clara, California,” and with a job description that indicates that Sophos  
20 maintains at least one permanent office inside this District, given that the “Main Duties” include  
21 “Greeting and directing visitors” and “Issuing visitor badges.” According to the web site for the  
22 California Secretary of State, Sophos has a California business entity number, and maintains an  
23 agent for service of process inside California.

24       8. This Court has personal jurisdiction over Valentine because he maintains his  
25 primary residence in this District.

26       9. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C.  
27 § 1391.

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## **INTRADISTRICT ASSIGNMENT**

2       10. This is an intellectual property action exempt from intradistrict assignment under  
3 Civil Local Rule 3-2(c), which makes this action subject to assignment on a district-wide basis.

## **FACTUAL BACKGROUND**

5       11.     Founded in 2000, Fortinet is a leader and worldwide provider of innovative  
6 network security appliances and unified threat management solutions. Fortinet's products and  
7 subscription services provide broad, integrated and high-performance protection against security  
8 threats while simplifying IT security infrastructures. Fortinet is a pioneer in the creation of  
9 Unified Threat Management ("UTM") security systems, which enable secure business  
10 communications. Fortinet's "Fortigate" systems detect and eliminate the most damaging, content-  
11 based threats from email and web traffic without degrading network performance. By integrating  
12 the industry's broadest suite of security protections, Fortigate systems allow Fortinet customers to  
13 obtain the most comprehensive UTM solutions. Fortinet is now the world's leading provider of  
14 UTM security systems, with over 20,000 customers worldwide. Fortinet is headquartered in  
15 Sunnyvale, California, with customer support, development, and sales facilities located throughout  
16 the world.

17        12. Fortinet has expended substantial resources researching and developing its patented  
18 technologies, technical strategies, and business plans related to its security products and services  
19 through the expenditure of considerable employee work hours and company resources. This  
20 research and development has led to numerous innovative products in the network security market.  
21 The United States Patent and Trademark Office has recognized Fortinet's achievements by  
22 awarding numerous patents to Fortinet and its inventors as a result of these innovations.

23        13. Fortinet has likewise expended substantial resources in recruiting, hiring, training  
24 and retaining its personnel.

25 14. On information and belief, Sophos competes with Fortinet in the network security  
26 industry.

## **Michael Valentine's Tenure At Fortinet**

2        15. For a period of almost six years—from May 2007 until February 2013—Valentine  
3 served as an officer and senior executive at Fortinet. His title at Fortinet was “Vice President  
4 Americas – Sales and Support.” (Fortinet does not have any “Senior” or “Executive” Vice  
5 Presidents.) Valentine occupied the highest possible executive management position for a sales  
6 and service function at Fortinet.

7        16.    Valentine was one of the highest ranking officers and executives at Fortinet.  
8 Fortinet maintained a public profile for Valentine on its public web site, identifying Valentine as a  
9 key member of Fortinet's "Executive Management."

10        17.    Valentine reported directly to Fortinet's Founder, Chairman of the Board and CEO.  
11 Valentine met with the board of directors of Fortinet in his capacity as a senior executive of the  
12 company. Valentine was responsible for supervising a large team of sales and support employees  
13 of Fortinet, both domestically and internationally.

14        18. While Valentine served as an officer and senior executive of Fortinet, he was  
15 provided substantial compensation by Fortinet.

16        19.      Valentine's duties at Fortinet from 2007 to 2013 have recently been described by  
17      Valentine and/or Sophos on the public web site for Sophos as follows:

18 . . . With more than twenty years of senior sales and channel  
19 experience at global IT security companies, Michael most recently  
20 served as vice president, Americas sales and support at Fortinet. In  
21 this role, *he oversaw all facets of the company's network security  
offerings—VPN, UTM, web filter, security software—and business  
development across North America, Latin America and  
Australia/New Zealand*, helping to increase corporate revenues by  
nearly 40 percent.

22 *He guided Fortinet's multi-national sales team through the*  
23 *company's successful IPO and played a major role in the*  
24 *integration of two acquired companies' sales teams. During his*  
25 *tenure, he also expanded the company's network of North America*  
26 *technology distributors, signed more than 700 new Americas*  
27 *partners and grew the internal channel team by more than 80*  
28 *percent, ultimately helping the company grow from \$200 million to*  
29 *over \$500 million in worldwide annual revenue.*

27 He is a recognized and respected sales executive who in 2008 and 2009 was named a top “Channel Chief” by CRN magazine. . . .

1 (See <http://www.sophos.com/en-us/company/management/michael-valentine.aspx>, last visited  
2 December 16, 2013, emphasis added.)

3 20. When Valentine began his duties at Fortinet, in exchange for good and valuable  
4 consideration, he chose to execute a written agreement (“Agreement”) with Fortinet. Valentine  
5 chose to sign the Agreement on May 21, 2007. A copy of the Agreement, signed by Valentine, is  
6 attached hereto as ***Exhibit A***.

7 21. In executing the Agreement on May 21, 2007, Valentine agreed to a clause with the  
8 title “Solicitation of Employees.” Valentine agreed as follows:

9 I agree that ***for a period of twelve (12) months immediately***  
10 ***following the termination of my relationship with the Company*** for  
any reason, whether voluntary or involuntary, with or without cause,  
11 ***I shall not either directly or indirectly solicit any of the Company's***  
***employees to leave their employment***, or attempt to solicit  
employees of the Company, either for myself or for any other person  
12 or entity.

13 (See Exhibit A at ¶ 8, emphasis added.)

14 22. In executing the Agreement on May 21, 2007, Valentine also agreed to a clause  
15 with the title “Termination Certification.” Valentine agreed as follows:

16 ***Upon separation from employment with the Company, I agree to***  
17 ***immediately sign and deliver to the Company the “Termination***  
***Certification”*** attached hereto as Exhibit C. I also agree to keep the  
18 Company advised of my home and business address for a period of  
three (3) years after termination of my employment with the  
19 Company, so that the Company can contact me regarding my  
continuing obligations provided by this Agreement.

20 (See Exhibit A at ¶ 6, emphasis added.)

21 23. Valentine chose to leave Fortinet in February 2013.

22 24. When Valentine chose to leave Fortinet in February 2013, he abided by the  
23 requirement in the Agreement that he execute a Termination Certification (“Certification”).  
24 Valentine signed his Certification on February 25, 2013. A copy of the Certification, signed by  
25 Valentine, is attached hereto as ***Exhibit B***.

26 25. In signing the Certification, Valentine confirmed that he was bound by the  
27 Agreement. He indicated that he was leaving Fortinet to become the “SVP WW Sales” at  
28 “Sophos.” He also reiterated his promise not to solicit any Fortinet employees to leave Fortinet

1 for a period of 12 months following his own termination at Fortinet. From Valentine's  
2 Certification:

3 I also agree that for twelve (12) months from this date, I will not  
4 directly or indirectly solicit, induce, recruit or encourage any of the  
Company's employees to leave their employment . . .

5 After leaving the Company's employment, I would be employed by  
6 SOPHOS in the position of: SVP WW Sales.

7 (See Exhibit B.)

#### **Valentine and Sophos Raid Fortinet's Employees**

8 26. Valentine joined Sophos as the "Senior Vice President, Worldwide Sales" in  
9 February 2013.

10 27. Valentine and Sophos—together and through the conduct of Valentine, at the  
11 intentional direction and/or encouragement and/or request of Sophos—violated Valentine's  
12 contractual and other lawful duties to Fortinet by attempting to solicit and induce numerous  
13 Fortinet employees to leave Fortinet. On information and belief, this unlawful solicitation  
14 occurred both before and after Valentine resigned from Fortinet.

15 28. Valentine's unlawful solicitation activities are evidenced by numerous facts,  
16 including—as examples—the following.

17 29. In April 2013—just two months after Valentine left Fortinet for Sophos—  
18 numerous important Fortinet employees, including senior executives, in fact departed Fortinet for  
19 Sophos at the inducement of Valentine and Sophos.

20 30. Fortinet's ***Vice President*** of Channel Sales (hereafter, "KK"), left Fortinet for  
21 Sophos in April 2013. At Sophos, KK was given the title "Vice President, Channel Sales, North  
22 America." KK's "LinkedIn" profile indicates that she conducts business on behalf of Sophos  
23 physically based out of the "Greater Chicago Area."

24 31. Fortinet's ***Vice President*** of Distribution for North America (hereafter, "RG"), also  
25 left Fortinet for Sophos in April 2013. At Sophos, RG was given the title "Director of  
26 Distribution, North America." RG's "LinkedIn" profile indicates he conducts business on behalf  
27 of Sophos physically based out of "Orange County, California."

1       32. A “Distribution Account Manager” at Fortinet (hereafter, “CB”) also left Fortinet  
2 for Sophos in April 2013. At Sophos, CB was given the title “Channel Account Executive.” CB’s  
3 “LinkedIn” profile indicates that he conducts business on behalf of Sophos physically based out of  
4 the “Greater Denver Area.”

5       33. Fortinet’s “Director, Central Region Channel Sales” (hereafter, “DD”) left Fortinet  
6 for Sophos in October 2013. At Sophos, DD was given the title “Director of Central Region  
7 Channel Sales.” DD’s “LinkedIn” profile indicates that he conducts business on behalf of Sophos  
8 physically based out of the “Dallas/Fort Worth Area.”

9       34. Not coincidentally, KK, RG, and CB all resigned from Fortinet—to join Valentine  
10 and to accept jobs at Sophos—in the exact same week of April 2013. Those three employees  
11 resigned from Fortinet just a few days shy of two months after Valentine left Fortinet.

12       35. Fortinet’s ***Vice President*** – Systems Engineering (hereafter, “JC”) left Fortinet for  
13 Sophos in November 2013. At Sophos, JC was given the title “Director of Sales Engineering.”  
14 On information and belief, this followed an in-person meal and/or meeting between JC, Valentine,  
15 and KK in approximately August 2013.

16       36. On information and belief, Valentine and Sophos solicited numerous Fortinet  
17 employees to leave Fortinet less than 12 months after Valentine left the company. Valentine and  
18 Sophos did this to damage Fortinet, to diminish Fortinet’s position in the marketplace, and to  
19 unfairly enhance their own positions.

20       37. On information and belief, Valentine and Sophos furthermore induced other former  
21 Fortinet employees to violate their Agreement with Fortinet by inducing them to solicit other  
22 Fortinet employees to leave the company. KK, RG, CB, and DD all signed an Agreement—just as  
23 Valentine did—requiring them as a contractual matter not to solicit other employees to leave  
24 Fortinet within 12 months of their employment at Fortinet. And yet, on information and belief,  
25 KK, RG, CB, and/or DD have solicited Fortinet employees (including each other) to leave the  
26 employment of Fortinet.

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## **COUNT NO. I (Against Sophos)**

## INFRINGEMENT OF U.S. PATENT NO. 7,698,744

3 38. Fortinet realleges and incorporates herein by reference the allegations contained in  
4 paragraphs 1-37.

5       39.      United States Patent No. 7,698,744 (“the ‘744 patent”), titled “SECURE SYSTEM  
6 FOR ALLOWING THE EXECUTION OF AUTHORIZED COMPUTER PROGRAM CODE,”  
7 issued on April 13, 2010. A true and correct copy of the ‘744 patent is attached as *Exhibit C* to  
8 this Complaint.

9        40.      Fortinet owns all right, title, and interest in and to the '744 patent, including all  
10 rights to enforce the '744 patent.

11        41.     On information and belief, without a license or permission from Fortinet, Sophos  
12 has infringed and continues to infringe, induced others to infringe and continues to induce others  
13 to infringe, and/or has committed and continues to commit acts of contributory infringement,  
14 literally or under the doctrine of equivalents, of one or more claims of the '744 patent, including at  
15 least claim 8 of the '744 patent. Sophos' infringing activities in the United States and in this  
16 District include importing, making, using, offering to sell, and/or selling products and devices that  
17 embody and/or practice the patented invention, including but not limited to Sophos Anti-Virus  
18 software which, on information and belief, is incorporated into, sold with, and/or used with  
19 infringing products marketed and/or sold under the names Sophos Enduser Protection Suites,  
20 Sophos Endpoint Security and Control, Sophos Endpoint Anti-Virus, Sophos Cloud, and other  
21 Sophos products, and contributing to, and inducing consumers and users to make and use the  
22 patented invention and to practice the claimed methods.

23        42. Specifically, on information and belief, Sophos induces others, including its  
24 customers and end-users, to infringe at least claim 8 of the '744 patent by encouraging and  
25 facilitating them to perform actions known by Sophos to infringe and with the intent that  
26 performance of the actions will infringe. Sophos has been aware of the '744 patent since at least  
27 the filing of this complaint.

1        43. On information and belief, Sophos induces consumers, including its customers and  
2 end-users, to make and use the claimed inventions and to practice the claimed methods by (i)  
3 providing Sophos Anti-Virus software and (ii) instructing consumers to use Sophos Anti-Virus  
4 software along with, *inter alia*, its anti-virus capabilities and in conjunction with Sophos Cloud  
5 and/or SophosLabs such that the combination as intended practices each of the elements of at least  
6 claim 8 of the '744 patent.

7 44. On information and belief, consumers make and use the claimed inventions and  
8 practice the claimed methods by using Sophos products, including but not limited to those  
9 identified above, that incorporate Sophos Anti-Virus software along with Sophos Cloud and/or  
10 SophosLabs, thereby directly infringing at least claim 8 of the '744 patent.

11        45. Sophos also contributes to the infringement of the '744 patent because Sophos  
12 knows that its products are made for use in an infringing manner and are not staple articles of  
13 commerce suitable for substantial non-infringing uses. Sophos' products, including those  
14 enumerated above, which it sells directly to consumers as well as through its distribution partners,  
15 are designed to be used (and are used by consumers and end-users) in an infringing manner.  
16 Additionally, on information and belief, Sophos' products, including those identified above, are  
17 especially designed, made, or adapted for use in an infringing manner. Sophos' products have no  
18 substantial non-infringing uses and are material to the claimed inventions.

19 46. On information and belief, Sophos' direct, induced, and/or contributory  
20 infringement of the '744 patent has caused and continues to cause substantial damage to Fortinet.

## **COUNT NO. II (Against Sophos)**

## **INFRINGEMENT OF U.S. PATENT NO. 8,069,487**

23 47. Fortinet realleges and incorporates herein by reference the allegations contained in  
24 paragraphs 1–46.

25       48.      United States Patent No. 8,069,487 (“the ‘487 patent”), titled “CLOUD-BASED  
26 APPLICATION WHITELISTING,” issued on November 29, 2011. A true and correct copy of  
27 the ‘487 patent is attached as *Exhibit D* to this Complaint.

1       49. Fortinet owns all right, title, and interest in and to the '487 patent, including all  
2 rights to enforce the '487 patent.

3       50. On information and belief, without a license or permission from Fortinet, Sophos  
4 has infringed and continues to infringe, induced others to infringe and continues to induce others  
5 to infringe, and/or has committed and continues to commit acts of contributory infringement,  
6 literally or under the doctrine of equivalents, of one or more claims of the '487 patent, including at  
7 least claim 24 of the '487 patent. Sophos' infringing activities in the United States and in this  
8 District include importing, making, using, offering to sell, and/or selling products and devices that  
9 embody and/or practice the patented invention, including but not limited to Sophos Anti-Virus  
10 software which, on information and belief, is incorporated into, sold with, and/or used with  
11 infringing products marketed and/or sold under the names Sophos Enduser Protection Suites,  
12 Sophos Endpoint Security and Control, Sophos Endpoint Anti-Virus, Sophos Cloud, among other  
13 Sophos products, and contributing to, and inducing consumers and users to make and use the  
14 patented invention and to practice the claimed methods.

15       51. Specifically, on information and belief, Sophos induces others, including its  
16 customers and end-users, to infringe at least claim 24 of the '487 patent by encouraging and  
17 facilitating them to perform actions known by Sophos to infringe and with the intent that  
18 performance of the actions will infringe. Sophos has been aware of the '487 patent since at least  
19 the filing of this complaint.

20       52. On information and belief, Sophos induces consumers, including its customers and  
21 end-users, to make and use the claimed inventions and to practice the claimed methods by (i)  
22 providing Sophos Anti-Virus software and (ii) instructing consumers to use Sophos Anti-Virus  
23 software along with, *inter alia*, its anti-virus capabilities and in conjunction with Sophos Cloud  
24 and/or SophosLabs such that the combination as intended practices each of the elements of at least  
25 claim 24 of the '487 patent.

26       53. On information and belief, consumers make and use the claimed inventions and  
27 practice the claimed methods by using Sophos products, including but not limited to those  
28

1 identified above, that incorporate Sophos Anti-Virus software along with Sophos Cloud and/or  
2 SophosLabs, thereby directly infringing at least claim 24 of the '487 patent.

3        54. Sophos also contributes to the infringement of the '487 patent because Sophos  
4 knows that its products are made for use in an infringing manner and are not staple articles of  
5 commerce suitable for substantial non-infringing uses. Sophos' products, including those  
6 enumerated above, which it sells directly to consumers as well as through its distribution partners,  
7 are designed to be used (and are used by consumers and end-users) in an infringing manner.  
8 Additionally, on information and belief, Sophos' products, including those identified above, are  
9 especially designed, made, or adapted for use in an infringing manner. Sophos' products have no  
10 substantial non-infringing uses and are material to the claimed inventions.

11 55. On information and belief, Sophos' direct, induced and/or contributory  
12 infringement of the '487 patent has caused and continues to cause substantial damage to Fortinet.

### **COUNT NO. III (Against Sophos)**

## **INFRINGEMENT OF U.S. PATENT NO. 8,195,938**

15        56. Fortinet realleges and incorporates herein by reference the allegations contained in  
16 paragraphs 1–55.

17 57. United States Patent No. 8,195,938 (“the ‘938 patent”), titled “CLOUD-BASED  
18 APPLICATION WHITELISTING,” issued on June 5, 2012. A true and correct copy of the ‘938  
19 patent is attached as *Exhibit E* to this Complaint.

20 58. Fortinet owns all right, title, and interest in and to the '938 patent, including all  
21 rights to enforce the '938 patent.

22        59. On information and belief, without a license or permission from Fortinet, Sophos  
23 has infringed and continues to infringe, induced others to infringe and continues to induce others  
24 to infringe, and/or has committed and continues to commit acts of contributory infringement,  
25 literally or under the doctrine of equivalents, of one or more claims of the '938 patent, including at  
26 least claim 30 of the '938 patent. Sophos' infringing activities in the United States and in this  
27 District include importing, making, using, offering to sell, and/or selling products and devices that  
28 embody and/or practice the patented invention, including but not limited to Sophos Anti-Virus

1 software which, on information and belief, is incorporated into, sold with, and/or used with  
2 infringing products marketed and/or sold under the names Sophos Enduser Protection Suites,  
3 Sophos Endpoint Security and Control, Sophos Endpoint Anti-Virus, Sophos Cloud, among other  
4 Sophos products, and contributing to, and inducing consumers and users to make and use the  
5 patented invention and to practice the claimed methods.

6       60.     Specifically, on information and belief, Sophos induces others, including its  
7 customers and end-users, to infringe at least claim 30 of the ‘938 patent by encouraging and  
8 facilitating them to perform actions known by Sophos to infringe and with the intent that  
9 performance of the actions will infringe. Sophos has been aware of the ‘938 patent since at least  
10 the filing of this complaint.

11       61.     On information and belief, Sophos induces consumers, including its customers and  
12 end-users, to make and use the claimed inventions and to practice the claimed methods by (i)  
13 providing Sophos Anti-Virus software and (ii) instructing consumers to use Sophos Anti-Virus  
14 software along with, *inter alia*, its anti-virus capabilities and in conjunction with Sophos Cloud  
15 and/or SophosLabs such that the combination as intended practices each of the elements of at least  
16 claim 30 of the ‘938 patent.

17       62.     On information and belief, consumers make and use the claimed inventions and  
18 practice the claimed methods by using Sophos products, including but not limited to those  
19 identified above, that incorporate Sophos Anti-Virus software along with Sophos Cloud and/or  
20 SophosLabs, thereby directly infringing at least claim 30 of the ‘938 patent.

21       63.     Sophos also contributes to the infringement of the ‘938 patent because Sophos  
22 knows that its products are made for use in an infringing manner and are not staple articles of  
23 commerce suitable for substantial non-infringing uses.    Sophos’ products, including those  
24 enumerated above, which it sells directly to consumers as well as through its distribution partners,  
25 are designed to be used (and are used by consumers and end-users) in an infringing manner.  
26 Additionally, on information and belief, Sophos’ products, including those identified above, are  
27 especially designed, made, or adapted for use in an infringing manner. Sophos’ products have no  
28 substantial non-infringing uses and are material to the claimed inventions.

64. On information and belief, Sophos' direct, induced, and/or contributory infringement of the '938 patent has caused and continues to cause substantial damage to Fortinet.

**COUNT NO. IV (Against Valentine)**

## **BREACH OF CONTRACT**

65. Fortinet realleges and incorporates herein by reference the allegations contained in paragraphs 1–64.

66. Fortinet and Valentine entered into a contract, described herein as the Agreement.

8        67.    Fortinet did all, or substantially all, of the significant things that the Agreement  
9 required it to do, and/or that Fortinet was excused from doing those things based on Valentine's  
10 breaches of the Agreement.

11       68. All conditions required by the Agreement for Valentine's performance occurred  
12 and/or were excused.

13        69.    Valentine breached the Agreement by soliciting, directly and indirectly, and  
14 attempting to solicit numerous Fortinet employees to leave Fortinet within 12 months of less of  
15 Valentine's termination from Fortinet.

70. Fortinet was harmed by this breach in an amount to be proven at trial.

17        71.      Fortinet has been and will be harmed irreparably as a result of Valentine's  
18 continued violations of the Agreement, unless that conduct is enjoined by this Court.

## **COUNT NO. V (Against Sophos & Valentine)**

## INTENTIONAL INTERFERENCE WITH CONTRACT

21        72. Fortinet realleges and incorporates herein by reference the allegations contained in  
22 paragraphs 1-71.

23       73.    Fortinet entered into the Agreement—a valid contract—with Valentine, pursuant to  
24 which Valentine agreed not to solicit Fortinet employees to leave Fortinet during a reasonable  
25 period of time. Likewise, KK, RG, CB, and DD all signed the Agreement with Fortinet or a  
26 document substantially identical to the Agreement.

74. Upon information and belief, Sophos became aware of Valentine's Agreement no later than Valentine's decision to accept an offer of employment from Sophos, in or before

1 February 2013. Sophos likewise became aware of the Agreement between Fortinet and KK, RG,  
2 CB, and DD at the same time.

3 75. Valentine was aware of the Agreement between Fortinet and KK, RG, CB, and DD  
4 well before 2013.

5 76. Upon information and belief, Sophos intentionally induced Valentine to breach the  
6 Agreement by inducing him to solicit Fortinet employees to leave Fortinet, including KK, RG,  
7 CB, DD, and/or JC, both before and shortly after (and less than 12 months from the date that)  
8 Valentine terminated his employment with Fortinet.

9 77. Upon information and belief, both Sophos and Valentine intentionally induced  
10 numerous individuals to breach their Agreement with Fortinet—including KK, RG, CB, DD,  
11 and/or JC—by inducing them to solicit Fortinet employees to leave Fortinet shortly after (and less  
12 than 12 months from the date that) those employees terminated their employment with Fortinet.

13 78. Upon information and belief, Sophos induced Valentine to breach the Agreement  
14 by inducing him to solicit Fortinet employees to leave Fortinet, including while those employees  
15 were still employed by Fortinet.

16 79. Upon information and belief, Sophos and Valentine induced numerous former  
17 Fortinet employees—including KK, RG, CB, DD and/or JC—to breach the Agreement by  
18 inducing them to solicit Fortinet employees to leave Fortinet, including while those employees  
19 were still employed by Fortinet.

20 80. Sophos engaged in wrongful conduct by intentionally disrupting Valentine's  
21 performance of, and by inducing his breaches of, the Agreement.

22 81. Sophos and Valentine engaged in wrongful conduct by intentionally disrupting the  
23 performance of, and by inducing breaches of, the Agreement between Fortinet and numerous  
24 former Fortinet employees.

25 82. The actions of Sophos and Valentine identified in this pleading were done with the  
26 intention of disrupting the contractual relationships between Fortinet and Valentine, and between  
27 Fortinet and numerous other Fortinet employees.

83. The actions of Sophos and Valentine identified in this complaint resulted in numerous breaches of the Agreement by Valentine and other former Fortinet employees.

84. As an actual and proximate result of Sophos' and Valentine's conduct, Fortinet has been damaged in the amount to be proven at trial.

85. Sophos' and Valentine's conduct was a substantial factor in causing Fortinet's harm.

86. In performing the acts described above, Sophos and Valentine acted willfully, maliciously, oppressively, with the intent to interfere with Fortinet's contractual interests and with conscious disregard for Fortinet's rights and the damages it would suffer thereby.

**DEMAND FOR JURY TRIAL**

87. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fortinet demands a jury trial on all triable issues.

## **PRAYER FOR RELIEF**

WHEREFORE, Fortinet prays for judgment and relief as follows:

A. A declaration that the Asserted Patents are valid and enforceable, and that Sophos has infringed and continues to infringe one or more claims of the Asserted Patents;

B. A preliminary and/or permanent injunction enjoining Sophos, its directors, officers, agents, and employees, and those acting in privity or in concert with them, and their partners, subsidiaries, divisions, successors, and assigns, from further acts of (i) interference with Fortinet contractual benefits, and (ii) infringement, contributory infringement, or inducement of infringement of the Asserted Patents;

C. An award of damages adequate to compensate Fortinet for Sophos' infringement, in accordance with 35 U.S.C. § 284, including all pre-judgment and post-judgment interest and costs;

D. Increasing the damages to three times the amount found or assessed by virtue of the deliberate and willful nature of Sophos' infringement, in accordance with 35 U.S.C. § 284;

E. A judgment that this is an exceptional case and that Fortinet be awarded attorneys' fees under 35 U.S.C. § 285:

F. A judgment that Fortinet be awarded damages as a result of Sophos' intentional interference with Fortinet's contracts;

G. A judgment that Fortinet be awarded damages as a result of Valentine's intentional interference with Fortinet's contracts;

H. A judgment that Fortinet be awarded damages as a result of Valentine's breach of contract:

I. A judgment that Fortinet be awarded pre-judgment and post-judgment interest on any award; and

J. That the Court award Fortinet any other relief as the Court deems just and proper.

Dated: December 16, 2013

Respectfully submitted,

By: /s/John M. Neukom

JOHN M. NEUKOM (CA Bar No. 275887)  
johnneukom@quinnemanuel.com  
QUINN EMANUEL URQUHART & SULLIVAN,  
LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700

Attorneys for Plaintiff FORTINET, INC.